

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 06-0176P**

**Penalty**

**For the Period: 7/2004 through 12/2004**

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**ISSUE**

I. **Tax Administration** – Penalty

**Authority:** IC 6-8.1-5-1(b); 45 IAC 15-5-3(b); 45 IAC 15-11-2

The taxpayer protests the assessment of a penalty.

**STATEMENT OF FACTS**

The taxpayer is in the information technology services business. The taxpayer was audited and as part of the audit a penalty was assessed. The taxpayer protested the proposed penalty assessment, and an administrative hearing was held. This Letter of Finding is the result of that hearing. More facts will be provided below.

I. **Tax Administration** – Penalty

**DISCUSSION**

Before examining the taxpayer's protest, it should be noted that the *taxpayer* bears the burden of proof. IC 6-8.1-5-1(b) states in pertinent part:

The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.

The Indiana Administrative Code also states "[t]he burden of proving that a proposed assessment is incorrect rests with the taxpayer...." 45 IAC 15-5-3(b).

The taxpayer protests the imposition of a negligence penalty. The taxpayer states in correspondence regarding the penalty:

We would like to respectfully request waiver of this penalty. This entity was previously audited for the period 1/1/2001 through 06/30/2004, where we were compliant in paying our audit liability under Amnesty.

And further, in other correspondence, the taxpayer notes the following:

- 1) The sales and use tax returns were filed in a timely manner.
- 2) During this six month period, we remitted a total of \$137,977.91 of sales and use tax to the Indiana Department of Revenue.
- 3) All tax collected was properly remitted to the Department of Revenue.
- 4) All records were made available to the auditor.
- 5) Statute waivers were signed on two separate occasions, at the Department's request.
- 6) Our tax assessment for 2004 was estimated based on records examined for the period 1/01 – 12/03. The auditor was obviously comfortable with the examination of records through 2003. She was comfortable that our business and accounting system had no significant changes in 2004. Therefore the error rate established through the 2003 period, was projected into 2004. The 2004 assessment was actually based on transactions which occurred during the Amnesty period.
- 7) The total audited population for the contested period was in excess of \$17.1M. Total errors for the period in question were only 4.3 [percent] of the total population dollars for this period.
- 8) No significant errors in one particular area. Errors were just unintentional oversights for accrual of use tax and were non recurring errors.

The taxpayer concludes that the “penalty should be waived because we believe our audit errors were due to reasonable cause and not due to willful neglect.”

45 IAC 15-11-2(b) states:

“Negligence” on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer’s carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

45 IAC 15-11-2(c) is also of import, and states that the Department “shall waive the negligence penalty ... if the taxpayer affirmatively establishes that the failure ... was due to reasonable cause and not due to negligence.” 45 IAC 15-11-2(c) notes:

In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty....

The taxpayer has “demonstrate[d] that it exercised ordinary business care” and that the penalty should be waived.

**FINDING**

The taxpayer’s penalty protest is sustained.

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